IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2006

CORAM :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION NO.42410 of 2006

& MP.NOS.1 AND 2 OF 2006

V.Subramanian ..Petitioner

Vs

1.The Commissioner and Director
of Geology & Mining, Guindy
Chennai-32.

2.The Collector of Sivaganga
Sivaganga District.

..Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings RC.No.8624/MM5/ 2006 dated 13.9.2006, quash the same and direct the second respondent to issue transport permit and despatch slip to the petitioner for quarrying rough stone and jelly in his land comprised in S.NOs.134/3C and 135/4B to an extent of 1.41.5 hectares at Sevur Village, Thirupattur Taluk, Sivaganga District as per lease deed dated 3.5.2005, which is valid upto 2.5.2010.

For Petitioner : Mr.M.Venkateswaran
For Respondents : Mr.R.Thirugnanam, SGP

O R D E R

Mr.R.Thirugnanam, learned Special Government Pleader takes notice. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. It is the case of the petitioner that though he is having a lease for quarrying rough stone and jelly, while the lease was in subsistence, the District Collector passed an order on the premise that on 1.6.2006 the Surveyor, the Revenue Inspector, the Assistant Geologist, the Village Administrative Officer and other officials

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inspected the quarry of the petitioner and found that the dimension of the mineral quarried at the time of completion of the earlier lease period i.e.upto 12.9.2004 was 21800 cub.meter and the dimension of the quarried area was 21960 cub.meter or 3880 lorry loads when they visited the quarries. On that basis, the District Collector passed an order on 10.7.2006 imposing Rs.6,98,400/- in respect of the value of the mineral, which includes the value of the mineral, seigniorage fee and enhanced seigniorage fee and directed the petitioner to pay the same amount in one lumpsum within 15 days from the date of receipt of the copy of the said order.

3. Aggrieved against the order of the District Collector, the petitioner preferred an appeal to the Commissioner and Director of Geology and Mining - the first respondent herein. Along with the appeal, he filed a stay petition for staying the order of the District Collector imposing penalty as aforesaid. The first respondent herein, who is expected to exercise his quasi judicial function, by an order dated 13.9.2006, simply rejected the stay petition on the ground that the stay petition was examined and there is no justifiable reason for granting stay of the order of the District Collector and on that ground, dismissed the stay petition keeping the appeal pending. That order is now put in issue by filing this writ petition.

4. I have heard the learned counsel for the petitioner and the learned Special Government Pleader and perused the materials on record.

5. This Court is of the considered opinion that the way in which the stay petition was dismissed by the first respondent, who is the statutory Appellate Authority and who is exercising quasi judicial functions, cannot be regarded as an order passed on application of mind and as required by the statutory provisions. Unmindful of the facts, the Appellate Authority dismissed the stay petition, in spite of the fact that if the stay petition is dismissed keeping the appeal pending, the amount would be sought to be recovered by the second respondent from the petitioner during the pendency of the appeal and there remains nothing in the appeal to be adjudicated. Be that as it may, as the reason stated in paragraph 2 of the order of the first respondent is bereft of any merits and discloses a total non application of mind, the order dated 13.9.2006 is liable to be set aside.

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6. Accordingly, the impugned order dated 13.9.2006 is set aside and the writ petition is allowed. There will be a stay of all further proceedings of the order of the second respondent dated 10.7.2006 till the disposal of the appeal by the first respondent. No costs. Consequently, the above MPS are dismissed.

RS

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Commissioner and Director of Geology & Mining, Guindy
Chennai-32.
2.The Collector of Sivaganga, Sivaganga District.

+ one cc to Mr. M. Venkateswaran, Advocate Sr no. 52807
+ one cc to the Government Pleader Sr no. 52857

GG(CO)
NM(21.11.2006)

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